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June 11, 2024

The Honorable Christopher J. Burke
United States District Court
for the District of Delaware
844 North King Street
Wilmington, DE 19801

VIA ELECTRONIC FILING

Re: *Agilent Technologies, Inc. v. Axion Biosystems, Inc.*,
C.A. No. 23-198-CJB (D. Del.)

Dear Judge Burke:

Pursuant to Paragraph 15 of the Scheduling Order (D.I. 29), the parties submit the following report on the status of this proceeding.

This case involves Plaintiff Agilent Technologies Inc.'s ("Agilent") claims of patent infringement, false advertising, trade secret misappropriation, and intentional and negligent interference with prospective economic advantage against Defendant Axion BioSystems, Inc. Specifically, Agilent alleges that Axion (1) directly and willfully infringes claims of U.S. Patent Nos. 7,192,752 ("the '752 Patent"), 7,468,255 ("the '255 Patent"), and 8,026,080 ("the '080 Patent") ("the "Asserted Patents") through the use of its Maestro Edge, Maestro Pro, Maestro Z, Maestro ZHT, and/or Maestro TrayZ (the "Maestro Platforms"), CytoView-Z 96-well and/or 384-well plate (the "CytoView-Z Plates"), and AxIS Z software; (2) induces at least its customers to infringe one or more claims of the Asserted Patents of at least the Maestro Platforms, CytoView-Z Plates, and AxIS Z software; and (3) contributes to infringement of one or more claims of the Asserted Patents of at least the CytoView-Z Plates. *See* Second Am. Compl. (D.I. 77), Counts I-III. Agilent also alleges: false advertising under the Lanham Act (Count IV); trade secret misappropriation under the Defend Trade Secrets Act (Count V); intentional interference with prospective economic advantage under California Law (Count VI); and negligent interference with prospective economic advantage under California Law (Count VII). *See* Second Am. Compl. (D.I. 77), Counts IV-VII.

Counts V-VII of the Second Amended Complaint were added after the filing of the First Amended Complaint (D.I. 16). Axion filed a partial motion to dismiss Count IV of the First Amended Complaint before the Second Amended Complaint was filed. *See* D.I. 22. This motion was renewed and incorporated in Axion's partial motion to dismiss Agilent's Counts V, VI, and VII of the Second Amended Complaint. *See* D.I. 87. Axion's motion to dismiss Count IV was

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denied. *See* D.I. 91. The Motion to Dismiss Counts V–VII is fully briefed (D.I. 88, 99, 101) and pending resolution.

Axion also filed a Motion to Sever Counts V, VI, and VII and Transfer to the Northern District of California. *See* D.I. 94. This motion is fully briefed. D.I. 95, 100, 105. Agilent filed a Motion for Leave to File a Sur-Reply, which is also fully briefed. D.I. 107, 112, 115. Both motions are pending resolution.

The parties have filed their Joint Claim Construction Brief (D.I. 120), the Joint Appendix (D.I. 121, 122), and lodged technology tutorials with the Court. The parties also filed a Second Amended Joint Claim Construction Chart (D.I. 134) and a Letter (D.I. 135) identifying the claim terms to be argued at the July 30, 2024 hearing.

Discovery is ongoing and the parties have served and responded to various discovery requests and the deadline for substantial completion of document production recently passed. The parties have engaged in productive meet and confers, and the parties have a variety of upcoming meet and confers related to discovery on both sides. There are no disputes ripe for raising with the Court at this time. The parties will use the Court's discovery dispute procedures should any disputes require the Court's attention.

Respectfully,

/s/ Travis Murray

Travis Murray (#6882)

cc: All Counsel of Record (via electronic mail)